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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,035	08/22/2003	Gust H. Bardy	020.0337.US.CON	9276

49475 7590 07/27/2005

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STE. 258  
SEATTLE, WA 98104

EXAMINER

OROPEZA, FRANCES P

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 07/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/646,035

Applicant(s)

BARDY, GUST H.

Examiner

Frances P. Oropeza

Art Unit

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 8/22/03 (*Initial Filing*).
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-54 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 8/22/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/22/03; 9/26/03; 12/15/03; 3/18/04; 4/30/04</u> | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

2. Claims 1-54 are rejected under 35 U.S.C. 102(e) as being anticipated by Brown (US 6168563). Brown discloses a system for remotely regularly monitoring patients that combine medical device monitoring with query of the patients based creating a data baseline (abstract; col. 1 @ 29-64; col. 6 @ 4-7). The system includes a server (2018) /clearinghouse (54) with a database (2038), a remote clinician workstation (60), a remote programmable patent interface apparatus (58), modem (52) / communication network (2024), and at least one monitoring device for measuring a physiological condition and for transmitting the measurements to the apparatus (16, 20 and 22) (figs 1, 2, 12; col. 9 @ 20-32 and 42-52; col. 15 @ 40-47). The apparatus includes a display and buttons to enable the query (figs. 14-16; col. 25 @ 58 – col. 26 @ 36) or a speech synthesizer and a speech recognizer for audible queries (figs 24-26; col. 32 @ 12 – col. 33 @ 34). As an option, the display can be used with the microphone (2118) and speaker (2072) (col. 32 @ 14-22). A scripted program(s), read as the computer readable storage medium for performing the methods, are received from the server to control the interactions between the apparatus and the patient (col. 9 @ 30-32) to collect monitoring device measurements (2044), to communicate the queries, to receive the responses (2042) and to

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transmit the measurement data and responses to the server (col. 25 @ 43-49), hence providing feedback on 4 levels: patient status indicator and, potential medical concern to patient; potential medical concern to local medical personnel; and device reprogramming. The query and the physiological monitoring are contemporaneous (col. 30 @ 37-41). The system produces a patient report (2058) where device measurements are shown graphically and where query responses are included (figure 21). The reports can be standardized or customized using analysis to define the patient status for the healthcare profession (col. 7 @ 23-58). Multiple patients are managed with the system (col. 5 @ 66- col. 6 @ 7). Multiple measurements (including sibling and peer measurements) are obtained and compared (col. 15 @ 40-57).

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fran Oropeza whose telephone number is (571) 272-4953.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300 for regular communication and for

After Final communications.

 7/24/05

Frances P. Oropeza  
Patent Examiner  
Art Unit 3762



Robert E. Pezzuto  
Supervisory Patent Examiner  
Art Unit 3762